

Letter of termination of employment (summary dismissal – serious misconduct) template

You can use this template when terminating an employee's employment for serious misconduct.

Generally, employers must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination of the employment (which cannot be before the day the notice is given). The written notice should specify the period of notice given (or payment in lieu of notice if the employee is not required to work the notice period) and the date the employment will end.

Summary dismissal for serious misconduct has immediate effect. It is a severe step to terminate an employee's employment without providing notice of termination (or payment in lieu of notice), so you may wish to seek legal advice about the matter before taking action.

Examples of serious misconduct are available on our website at www.fairwork.gov.au.

Are you a small business owner?

If you operate a small business it is important that you follow the Small Business Fair Dismissal Code when terminating an employee's employment. Find out more in the Termination section at www.fairwork.gov.au/Termination.

Suggested steps for preparing a letter of termination for summary dismissal

Before making a definite decision to summarily dismiss an employee because of serious misconduct, you may wish to follow the steps below.

For more information on unfair dismissal, visit www.fairwork.gov.au.

If at any time you need more information or assistance, call the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

Step 1: Identify the serious misconduct and consider seeking legal advice

Identify exactly what the employee did that was unacceptable and the impact the misconduct had on the business. Dismissing an employee without notice of termination is a serious step, so you may wish to seek legal advice about the matter before taking any action.

Step 2: Discuss the misconduct with the employee

Speak to the employee directly about the conduct to avoid making assumptions about the situation. Explain your intention in relation to continuing their employment.

In any formal meeting, the employee should be allowed to be represented or accompanied by a support person. When reviewing unfair dismissal claims, the Fair Work Commission may consider whether an employer unreasonably refused to allow an employee to have a support person at any discussion relating to their dismissal.

You should keep a record of any meetings that you have with employees about their conduct. You may wish to use our Recording details of a meeting template to do this – available in the Templates section at www.fairwork.gov.au/templates.

Step 3: Consider your options

Depending on the severity of the misconduct, you may choose to:

- give the employee a written warning
- dismiss the person with notice or pay in lieu of notice, or
- summarily dismiss the person.

However, you may wish to seek legal advice about the matter before taking any action.

Step 4: Create your letter of termination of employment

If the employee's action was serious misconduct that warrants summary dismissal, create an appropriate termination of employment letter. While you do not need to provide the employee with notice of termination for serious misconduct, it is best practice to provide written confirmation that you are ending their employment.

Ensure you include in the letter:

- the reasons for the termination of the employment
- when the employment will end, and
- that some termination payments may result in waiting periods for Centrelink payments.

This letter of termination template has been colour coded to assist you to complete it accurately. You simply need to replace the red < > writing with what applies to your employee and situation. Explanatory information is shown in blue italics to assist you and should be deleted once you have finished the letter.

Step 5: Meet with the employee to provide the letter of termination of employment

The reasons for the termination of employment should be explained to the employee verbally and he or she should be provided with the opportunity to ask questions.

It is important to explain the information in the letter of termination of employment and ensure that the employee understands.

You should keep a copy of the letter of termination of employment for your records.

Important: An employee may choose to submit a complaint or claim against you (e.g. unfair dismissal, discrimination) even if you follow these steps.

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

<Print on your business letterhead>

<Date>

Private and confidential

<Insert employee's full name>

<Insert employee's residential address>

Dear <insert name>

Termination of your employment

I am writing to you about the termination of your employment with <insert company/partnership/sole trader name and the trading name of business>.

I refer to our meeting on <insert date> which was attended by you and <insert name of others at the meeting>. During the meeting we discussed <insert details of serious misconduct>.

This meeting was attended by you and <insert names of people at the meeting> and we spoke about <insert details of the serious misconduct incident, including the date it occurred>.

As discussed during the meeting, your conduct during that incident:

Delete the points not applicable or add other if you believe they warrant summary dismissal. Seek legal advice if you are unsure if the actions warrant termination of employment without notice.

- was wilful or deliberate behaviour by you that is inconsistent with the continuation of your contract of employment.
- caused a serious and imminent risk to the health or safety of a person.
- caused a serious and imminent risk to the reputation, viability or profitability of the Employer's business in that <insert details>.
- was conduct in the course of your employment engaging in theft, and in the circumstances your continued employment during a notice period would be unreasonable.
- was conduct in the course of your employment engaging in fraud, and in the circumstances your continued employment during a notice period would be unreasonable.
- was conduct in the course of your employment engaging in assault and in the circumstances your continued employment during a notice period would be unreasonable.
- you were intoxicated at work, to the extent that you were so impaired that you were unfit to be entrusted with your employment duties.
- you refused to carry out a lawful and reasonable instruction that was consistent with your contract of employment, and in the circumstances your continued employment during a notice period would be unreasonable.

We consider that your actions constitute serious misconduct warranting summary dismissal.

You will also be paid your accrued entitlements and any outstanding pay up to and including your last day of employment. This includes the balance of any time off instead of overtime paid accrued but not yet taken (paid at the overtime rate applicable when the overtime was worked), and superannuation.

If you have been paid annual leave in advance, any amount still owing will be deducted from your final pay.

You may seek information about minimum terms and conditions of employment from the Fair Work Ombudsman. If you wish to contact them you can call 13 13 94 or visit their website at

www.fairwork.gov.au.

Some termination payments may give rise to waiting periods for any applicable Centrelink payments. If you need to lodge a claim for payment you should contact Centrelink immediately to find out if there is a waiting period.

Yours sincerely,

<Insert name>

<Insert position>

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS